REGISTERED No. M. 7463.

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. VII] Trivandrum, Thursday, 27th September 1962 / 5th Asvina 1884 [No. 128

GOVERNMENT OF KERALA

Industries (A) Department

NOTIFICATION

No. 30843/62/A4/ID. *Dated, Trivandrum, 27th September* 1962.

In exercise of the powers conferred by sub-section (3) of Section I of the Kerala Money Lender's Act, 1958 (Act 35 of 1958), the Government of Kerala hereby direct that the Notification No. 8045/A4/59/ID dated 4-8-1960 bringing the Act into force in certain areas of the State which has been kept in abeyance for the period from 15-10-1960 to 30-9-1962, by S. R. Nos. 77/60 dated 15-10-1960, 19/61 dated 13-1-1961, 112/61 dated 29-3-1961, Notification No. 35085/A4/61/ID dated 29-9-1961 and Notification No. 9859/A4/62/ID dated 22-3-1962 shall be kept in abeyance for a further period of six months i. e., up to 1-4-1963.

By order of the Governor,
P. VELU PILLAI,
Joint Secretary.

PRINTED AND PUBLISHED BY THE S.C.P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1962.

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Legislature Secretariat

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2. Report of the Select Committee on the General Sales Tax (Third Amendment and Validation) Bill, 1962 and the Bill as reported by the Select Committee.
3. Resignation of Shri Pattom A. Thanu Pillai from the Kerala Legislative Assembly.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1962.

NOTIFICATION

No. 4717|LA-7|62. *Dated, Trivandrum, 27th September 1962.*

The following Bill together with the Statement of Objects and Reasons, is published, as ordered by the Speaker under Rule 67 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

D. TIRUMALAI IYENGAR,
Secretary,
Legislative Assembly.

Legislature Secretariat,
Trivandrum, 27-9-1962.

L. A. Bill No. 26 of 1962.

THE KERALA AGRARIAN RELATIONS (SECOND AMENDMENT) BILL, 1962

A

BILL

further to amend the Kerala Agrarian Relations Act, 1960.

Preamble.—WHEREAS it is expedient further to amend the Kerala Agrarian Relations Act, 1960, for the purpose hereinafter appearing;

BE it enacted in the Thirteenth Year of the Republic of India as follows:—

1. *Short title.*—This Act may be called the Kerala Agrarian Relations (Second Amendment) Act, 1962.

2. *Insertion of new section 4A.*—After section 4 of the Kerala Agrarian Relations Act, 1960 (Act 4 of 1961), the following section shall be inserted, namely:—

"4A. *Certain mortgagees to be deemed tenants.*—(1) Notwithstanding anything to the contrary contained in any law or contract, or in any judgment, decree or order of Court, a mortgagee with possession of immovable property situate in Cochin shall be deemed to be a tenant for the purposes of this Act, if—

(a) the property comprised in the mortgage consists of agricultural land; and

(b) the interest on the mortgage amount is less than forty per cent of the total rent fixed in the mortgage document and there is a stipulation for the payment of customary dues.

(2) The mortgage money or any portion thereof may, at the option of the mortgagor be treated as security for rent. The mortgagor shall return the mortgage money or the portion thereof which he does not elect to treat as security for rent to the tenant within six months from the commencement of the Kerala Agrarian Relations (Second Amendment) Ordinance, 1962.".

3. *Repeal and saving.*—(1) The Kerala Agrarian Relations (Second Amendment) Ordinance, 1962 (Ordinance No. 6 of 1962), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act, as if this Act had commenced on the 6th day of September, 1962.

STATEMENT OF OBJECTS AND REASONS

The Cochin Proclamation VI of 1124 provided that no suit for redemption of a mortgage with possession shall be maintainable in courts where the interest on the mortgage amount was less than 40 per cent of the total rent fixed in the mortgage document and where the property comprised in the mortgage consisted mainly of agricultural land other than lands planted with rubber, coffee, tea or cashew. The stay provided in the Cochin Proclamation was on the basis that such transactions, though called mortgages, were really of a tenancy nature and deserved protection under the tenancy law. In the Cochin Tenancy Bill introduced in the Cochin Legislative Assembly subsequently, such transactions were treated as tenancies. This Bill however lapsed on the formation of the State of Travancore-Cochin. The Proclamation VI of 1124 was repealed by the Kerala Agrarian Relations Act, 1960. But no provision with regard to such mortgages was made in that Act. It was represented to Government that the absence of a corresponding provision in the Kerala Agrarian Relations Act had resulted in hardships to holders of such mortgages, and that taking advantage of the absence of such a provision they were being threatened with eviction by suits in civil courts.

It was considered that a provision to protect the holders of such mortgages should be inserted in the Kerala Agrarian Relations Act. Since the Legislative Assembly was not in session, an Ordinance for the purpose was promulgated and published on the 6th of September, 1962, as Ordinance 6 of 1962. The Bill seeks to replace the Ordinance by an Act of the Legislature.

K. CHANDRASEKHARAN.

THE GENERAL SALES TAX (THIRD AMENDMENT AND VALIDATION) BILL, 1962

(Report of the Select Committee)

The Select Committee to which the General Sales Tax (Third Amendment and Validation) Bill, 1962 was referred have considered the Bill and now submit this their report with the Bill as reported by the Select Committee annexed thereto.

2. The Bill was published in the Gazette Extraordinary dated the 7th April 1962.

3. The Bill was introduced in the Assembly on the 12th April 1962 and a motion for reference to a Select Committee was adopted on the same date.

4. The Committee met on 10th July 1962 and 24th September 1962. The Committee considered the Bill and recommended that it may be adopted without any modification.

R. SANKAR,
Chairman of the Select Committee.

THE GENERAL SALES TAX (THIRD AMENDMENT AND VALIDATION) BILL, 1962

Minutes of Dissent

The Bill proposes to amend sub-section 2 of Section 11 of the General Sales Tax Act, 1125 with retrospective effect from 30th May 1950. The proposed amendment makes it obligatory on the part of the dealers to pay over to Government all amounts collected by way of tax irrespective of the tax liability under the charging section (i.e.) Section 3 of the Act. The proposed amendment is discriminatory in character in so far as it differentiates the dealers in erstwhile Travancore-Cochin State and dealers in erstwhile Malabar District who are similarly placed. The Sales Tax collections made over and above the tax liability has been declared by the Madras High Court as collections not by way of tax (vide the Judgment in Civil Revision Petition No. 2799|1952 dated 14th April 1954 reported in 1954 S.T.C. page 382). It is true that the corresponding section of the Sales Tax Act was amended in 1959 but that amendment is not binding to the erstwhile Malabar District as the Madras Legislature when it passed the amendment had no legislative jurisdiction over the erstwhile Malabar District by virtue of the State Reorganisation Act, 1956. Therefore a dealer in erstwhile Malabar District governed under the Madras Sales Tax Act, 1939 till 30-9-1957 is not bound to pay over to Government collections made over and above the tax liability while the dealer in erstwhile Travancore-Cochin State is bound to pay over to Government all collections irrespective of tax liability. This discrimination can possibly be avoided, provided the amendment is made retrospective in operation from 1-10-1957 when the General Sales Tax Act, 1125 was extended to the whole of the State of Kerala (Act XII of 1957).

It is for the Honourable Members of the House to examine the provisions and to consider seriously whether the amendment proposed in the bill would not violate the fundamental constitutional principles enunciated under Article 14 of the Constitution.

E. P. EAPEN
25-9-1962.

THE GENERAL SALES TAX (THIRD AMENDMENT AND VALIDATION) BILL, 1962

(As reported by the Select Committee)

A

BILL

further to amend the General Sales Tax Act, 1125, and to provide for certain other connected matters.

Preamble:—WHEREAS it is expedient further to amend the General Sales Tax Act, 1125, for the purpose hereinafter appearing and to provide for certain other connected matters;

BE it enacted in the Thirteenth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the General Sales Tax (Third Amendment and Validation) Act, 1962.

(2) This section and section 3 shall come into force at once and section 2 shall be deemed to have come into force on the 30th day of May, 1950.

2. *Amendment of section 11.*—In section 11 of the General Sales Tax Act, 1125 (Act XI of 1125),—

(i) in sub-section (1), the proviso shall be omitted;

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Every person who has collected or collects any amount purporting to be by way of tax under this Act on or after the 30th day of May, 1950, whether or not any tax is due from him under this Act in respect of the transaction in which he has collected or collects such amount, shall pay over to the Government within such time and in such manner as may be prescribed, all amounts so collected by him, if they are in excess of the tax, if any, paid by him for the period during which the collections were made; and, in default of such payment, the amounts may be recovered as if they were arrears of land revenue".

3. *Validation.*—Notwithstanding anything contained in any judgment, decree or order of any court,—

(a) all amounts falling within the purview of sub-section (2) of section 11 of the General Sales Tax Act, 1125, as amended by this Act, and paid by, or collected or recovered from, a dealer on or after the 30th day of May, 1950, shall, for all purposes, be deemed to be, and to have always been, validly paid, collected or recovered; and

(b) all proceedings taken, orders passed and acts done by any officer or authority for the collection or recovery of any amount under sub-section (2) of section 11 shall, for all purposes, be deemed to be, and to have always been, taken, passed and done in accordance with law, and all such proceedings, orders and acts may be continued as if taken, passed and done under the General Sales Tax Act, 1125, as amended by this Act:

Provided that nothing in this Act shall render any person liable to be convicted of an offence in respect of anything done or omitted to be done by him before the date of publication of this Act in the Gazette, if such act or omission was not an offence under the General Sales Tax Act, 1125, before the aforesaid date, but for the provisions of this Act.

Legislature Secretariat,
Trivandrum,
27th September 1962.

D. TIRUMALAI,
Secretary.
Legislative Assembly.

NOTIFICATION

No. 4797-LA.1|62. *Dated, Trivandrum, 27th September 1962.*

Shri A. Thanu Pillai, an elected member of the Kerala Legislative Assembly from the 'Trivandrum—II' Constituency has resigned his seat in the Kerala Legislative Assembly on the afternoon of the 25th September 1962.

By order,

D. TIRUMALAI,
Secretary,
Legislative Assembly.

Legislature Secretariat,
Trivandrum.